

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
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JAMES F. PETERS, CSR, RPR
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APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson
Mr. Marc Carrel, Vice Chairperson
Ms. Caren Daniels-Meade
Mr. David Jefferson
Ms. Debra Jones
Mr. Tony Miller
Mr. John Mott-Smith

STAFF

Ms. Dawn Melhaff, Deputy Chief, Elections Division
Mr. Michael Wagaman, Elections Analyst

ALSO PRESENT

Ms. Kim Alexander, California Voter Foundation
Mr. Brad Clark, Alameda County, Registrar of Voters
Mr. Lowell Finley
Ms. Paula Lee, Californians for Electoral Reform
Mr. Jim March, Black Box Voting
Mr. Dennis Paull, Commonweal Institute
Mr. Linda Roberts, CDR/P&F
Ms. Maureen Smith, Peace & Freedom Party
Ms. Jocelyn Whitney, Consultant, R&G Associates

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CHAIRPERSON KYLE: Good morning. My name is Mark Kyle. I'm the Chair of the Voting Systems and Procedures Panel. Welcome to the July 12th meeting.

And we will review the agenda and then attend to the agenda items that are -- the agenda is listed up by that gentlemen standing in the back of the auditorium, in that direction, if you haven't grabbed one or you need one. There's also cards for speaking if anyone would like to address the panel and make any public comments.

I just want to review the agenda because it's changed from the posted one. This agenda for this meeting was posted over a month ago. And with the -- there were a number of agenda items placed on the agenda at that time, as well as several dates placed on the agenda at that time. The purpose was to create placeholders on the calendar for both the systems that we thought were -- we either believed were going to be submitted to us for review, we had in the pipeline for review, we had our hands on it, or we knew or believed were with the federal authorities and would be coming to us at some time.

At the time that we set up the agenda, we were unsure of what -- other than the ones that were in our hands we were unsure the ones that were with the federal authorities, would -- they would reach us in time for any

1 of these or which ones they might reach us in time for;
2 and, likewise, ones that we were just hearing about that
3 were going to be submitted to the federal authorities
4 before coming to us.

5 But in keeping with the promise and commitment
6 made by the Secretary of State on April 30 that he would
7 expedite everything in order to -- every possible aspect
8 of our agency in reviewing and evaluating voting systems
9 germane to the November election this year, we decided in
10 an abundance of caution to schedule as many meetings as
11 possible.

12 So I know that caused some consternation with
13 some folks out in the public. We got inquiries why
14 everything was on there including the kitchen sink and why
15 so many dates. But that was the goal, was to just create
16 placeholders so that we could go forward. Our Panel
17 members were aware that they had to make available that
18 time on those dates.

19 And then as we got closer we would try to
20 ascertain more realistically what actually got into our
21 hands and got evaluated and whether it was still some of
22 those things -- knowing that some things may remain in the
23 hands of the testing authorities at the federal level or
24 are being developed by the vendors still or reviewed by
25 counties in discussion with the vendors and may or may not

1 get to us.

2 So that kind of leads in a long-winded fashion to
3 where we actually are today. And I'll start with the
4 dates. If you'll see the dates, there's a whole proposed
5 set of new dates in August. And it's come to my attention
6 as of last week -- and we'll get a staff report today if
7 anything's changed -- that next week there probably won't
8 be anything to review.

9 So under No. 7, Other Business, we'll be talking
10 about dates of the next meetings. And, again, part of
11 that will be for the purpose of placeholder and just be
12 preparing and ready and on standby to evaluate anything if
13 necessary and appropriate.

14 As to today, two of the items will be addressed
15 besides dates, two other items:

16 Number 1, under Elections Systems and Software,
17 there's a discussion regarding the San Francisco rank
18 choice voting and a proposal to modify an order that was
19 issued in April.

20 And, second, Diebold Election Systems under
21 Agenda Item 5 for a system that will be put forward.

22 So I'd like to start with No. 1. And then No. 7
23 we'll go to dates of next meetings.

24 The other ones are not being heard for a variety
25 of reasons. In one instance a vendor withdrew their

1 application. And in another instance the vendors were not
2 ready to submit it to us. And they're either working on
3 it or it's at the federal level. And I believe that's
4 true in a couple of other situations.

5 And in some of these the vendor made the request
6 for the postponement. In other ones the ITA just hasn't
7 been reviewing it or it's still with the vendors. So,
8 again, these were placeholders and we're not necessarily
9 going to talk about them at every single meeting.

10 So if we could start with No. 1. And we have a
11 staff report update on the ES&S System for rank choice
12 voting in San Francisco.

13 ELECTIONS DEPUTY CHIEF MEHLHAFF: As you know,
14 you guys heard the rank choice voting item back in early
15 April, and on April 30th a certification was signed for
16 ES&S to go forward with the rank choice voting
17 modification for the City and County of San Francisco, one
18 time use only. This is just to give you an update.

19 One of the conditions that you placed upon them
20 was to submit some of the firmware patches for review for
21 federal ITA testing. And one of the conditions was that
22 that report had to be received by May 10th. And as you
23 recall from that meeting, the May 10th deadline was a date
24 that was specified by the City and County of San Francisco
25 to coincide with some contract negotiations that they were

1 doing. The vendor did not meet the May 10th deadline.

2 However, due to some issues at the federal level,
3 they went ahead and resubmitted the patches to CIS tests,
4 which is an ITA laboratory. And we did receive a final
5 report last week from them showing that there were no
6 security issues with those patches, which was essentially
7 what you asked them to look for.

8 So given the fact that they did submit that and
9 that that date was only driven essentially by some
10 contract stuff on the City and County of San Francisco
11 side and that the city and county is fine with the date
12 being missed and the report now being issued, staff has
13 included in your binders an amended certificate which
14 essentially keeps in place all the other conditions that
15 you placed upon them, the fact that it's a one-time use
16 only, the fact that it has to be used with state certified
17 stuff, it only lists that condition that the firm -- or
18 whatever needed to be submitted to the ITA since we did
19 receive a completed report. So that is in front of you
20 for your consideration.

21 CHAIRPERSON KYLE: Thank you, Ms. Mehlhaff.

22 And just for the record, on or about May 10th,
23 when it was evident that the vendor was not going to
24 submit the testing results to the city -- or to us by May
25 10th, I had a conversation with John Arntz, the Director

1 of Elections for the City and County of San Francisco and
2 asked him if it was a concern of his and whether this --
3 how much of a monkey wrench this threw into the works.
4 And he indicated that he was not pleased by it, but it was
5 not a show stopper and was willing to wait for the
6 submission of the final report. I had repeated
7 conversations with John Arntz throughout the month of May
8 and into -- throughout June, along with the vendors
9 themselves, as did our Elections Department with the
10 vendor, and -- with John Arntz occasionally. And in fact
11 I addressed the San Francisco City and County Elections
12 Commission on this very issue last week.

13 So we placed that -- the second main. So they
14 were satisfied by the submission.

15 So in terms of the May 10th date, also the
16 record, and if folks go back will recall, Panel members,
17 that on April 6th we debated about that date. And I
18 believe, Tony, you had originally suggested a June 30th or
19 July 1 date or even later. I can't recall actually. And
20 because of the city's request it was moved to May 10th.
21 So that was a City of San Francisco driven date. Ours
22 would have been much later. And the city has gotten
23 reports, so that's what they were looking for, and is
24 willing to waive the dates.

25 So the new order basically just modifies the

1 date.

2 VICE CHAIRPERSON CARREL: Move the item.

3 PANEL MEMBER MILLER: Second.

4 CHAIRPERSON KYLE: Any further discussion?

5 Any comments from the audience on this agenda
6 item?

7 Okay. All those in favor of adopting the new
8 order say aye.

9 (Ayes.)

10 CHAIRPERSON KYLE: Those opposed?

11 Any abstentions?

12 The ayes have it.

13 And I'd like to direct the staff to prepare the
14 new order to be submitted to San Francisco later today
15 with a cover letter explaining that the VSP passed it,
16 over my signature, please.

17 So if we could move to Agenda Item No. 5, the
18 second agenda item, the submission under Diebold Election
19 Systems.

20 Staff report please.

21 ELECTIONS ANALYST WAGAMAN: We'll be focusing on
22 Agenda Items 5a and 5b; 5c is not prepared -- is not ready
23 to come before the panel.

24 The applications is a modification of the current
25 AccuVote-TS DRE voting system and a GEMS software package

1 currently used in California. The application consists of
2 four components: The AccuVote TS Firmware Version
3 4.3.15D, GEMS Version 1.18.19, a Spyrus Voter Card Encoder
4 Firmware Version 1.3.2, and a Key Card Tool Utility
5 Version 1.0.1.

6 Testing has been completed on a federal level and
7 they have been issued a NASED number, which is in your
8 staff -- in the staff report. State testing was conducted
9 June 28th and 29th here in Sacramento, along with our
10 technical consultant, Mr. Freeman.

11 Going through the changes that are made up --
12 that are contained within the application to the AccuVote
13 TS, which is a self-contained touchscreen voting device.
14 You are familiar with it. It's come before the panel
15 before. There's a picture of it on page 5 of the
16 technical consultant's report. And we also have a copy
17 here on the staff table.

18 The modification consists of three primary
19 components to the firmware:

20 One is additional security measures, changing the
21 encryption system from a static vendor defined key to a
22 dynamic user defined key. I'll go more into detail on
23 those additional security measures later on in the report
24 because they do affect all of the various components.

25 There's a correction to an error or a bug that

1 was previously identified during the primary where if a
2 decline-to-state voter crossing over and voting a
3 different party ballot, if they wrote in a candidate in
4 more than one race, in certain instances that would create
5 an error message and the voter couldn't go forward and
6 would then be forced to -- a paper ballot. That has been
7 corrected in the new version.

8 And, third, there were additional changes made to
9 comply with FEC coding guidelines.

10 The second component of the system is the GEMS
11 software. Again this is the election management software.
12 It's come before the panel several times. The basic
13 function has not changed. If there's a need to go back to
14 review that basic function of the software, we can do that
15 at the panel's request.

16 This is a modification from the previously
17 certified Version 1.18.18. The change consists of five
18 components:

19 One, the aforementioned security features, which
20 again I will address later.

21 Modifications to the reporting functions,
22 primarily are to correct errors that were discovered
23 either previously or during testing. For example, in
24 races where there are a large number of candidates, the
25 system would sometimes truncate the number of candidates.

1 So if there's one page, it would list all the candidates
2 on one page and then would not print a second page of
3 candidates results. So those have been corrected.

4 Third, there are modifications to accommodate a
5 high speed scanner. Those were not part of the state
6 testing as it was not part of the application. So those
7 changes were not tested. They were tested on the federal
8 level, however.

9 Fourth, there are corrections to again identify
10 bugs, errors, problems either previously identified or
11 identified through the testing process. One of those is
12 of note. In California there was an issue that was
13 identified during a primary relating to the county
14 provisional ballots. There's been a law change in
15 California that if a voter casts a ballot on the wrong
16 basically ballot type, that ballot would be counted in the
17 races in which they were eligible and not in the races in
18 which they were not.

19 Under the old version the elections official was
20 not able to view the provisional ballot prior to accepting
21 or rejecting it. So, therefore, they couldn't tell which
22 race the person was eligible for. The new version
23 corrects this and allows the elections official to view
24 the provisional ballot before taking action on it.

25 The system still does not allow automatically to

1 accept a portion of the ballot. So there is still a need
2 to view the ballot and then recreate it, usually through a
3 paper -- recreate a paper ballot that would then be
4 scanned and entered into the system.

5 And then, fifth, again changes required because
6 of FEC coding guidelines.

7 The third component is the Spyvus Vote Encoder.
8 This is a small hand-held device, slightly bigger than a
9 credit card. It's a hand-held device. Its function is
10 similar to the PCM, which the panel's familiar with. It
11 creates the voter access cards. It's a modification from
12 the previous -- the Spyvus has been used before in
13 California. It's been modified again to allow for those
14 additional security measures.

15 One thing of note with the Spyvus is that it is
16 limited to eight ballot styles. So particularly in
17 primaries where we have more than those eight ballot
18 styles there will be a need to have multiple Spyvuses in
19 each precinct.

20 Key card tool is a software package. It's a
21 companion with the GEMS. It's a new software utility,
22 again related to the additional security measures, which
23 is a nice transition into what those really security
24 measures entail.

25 Under the old system, there were two levels of

1 voter -- of access cards: A supervisor and a voter access
2 card. Under the new system there's now an additional
3 level, a key or master card.

4 Using the key card tool utility, the user can
5 define both the key, which is a 16 digit hexadecimal,
6 which means it can use nine -- or the ten digits plus A
7 through F key, which is the encryption key, that before
8 defined the system and could not be changed by the user.
9 Now the user would have the ability to modify that through
10 that central tabulation software through the key card
11 tool. In addition, they can modify the PIN, which is the
12 four-digit numeric key that's used by the supervisors out
13 in the field with their supervisor card.

14 Once they activate and create that key master
15 card -- or key or master card from the central computer,
16 it can be taken out to the TS's and to the Spyruses,
17 inserted into those systems; and then those systems are
18 now programmed with that new key and it will now only
19 accept other cards -- supervisor cards or access cards
20 that have that same key. And if there's an attempt to use
21 a card with a different key, after three attempts a) will
22 reject the card and b) if it's attempted multiple times,
23 after three attempts the card will actually be permanently
24 destroyed and will not be able to be used again.

25 So, again, this is an additional security

1 measure. As reflected in the consultant's report, this
2 does not address all of the security issues that have been
3 raised publicly with this system, but it does represent a
4 significant improvement over the current system in
5 addition to these additional -- the improved functionality
6 described earlier in the staff report.

7 Touching quickly on the requirements from April
8 30th -- the Secretary's actions from April 30th. The
9 system does not include an accessible voter-verified paper
10 audit trail. Therefore, the system would be limited to
11 those counties that use -- if the system was certified by
12 the Panel, that certification would be limited based on
13 the previous action of the counties that use this system
14 in the March 2004 action in Alameda, Plumas, and Los
15 Angeles for early voting. And, again, the system would
16 need to be modified by July -- by the July date, 2006, to
17 include the accessible voter-verified paper audit trail.

18 In addition to the -- on the April 30th, the
19 additional security measures that were required, and again
20 based on the previous actions, the system would have to
21 comply with those as well.

22 Therefore, as the system has been federally
23 qualified, has passed state testing, does -- for
24 representing improved functionality, and does have
25 improved security features, it is the recommendation of

1 staff that the panel certify the AccuVote TS Version
2 4.3.15D, the GEMS 1.18.19, the SpyruS Vote Encoder 1.3.2,
3 the Key Card Tool 1.0.1, with one condition: The GEMS
4 software was not tested on the state level with the other
5 voting systems' components, particularly the TSx and the
6 AccuVote Optical Scan. There is testing scheduled for
7 next week actually on the optical scan along with the
8 GEMS.

9 With testing with other systems we have run
10 across issues where components not tested together have
11 created issues and errors. We don't expect that with this
12 system. But because of that, staff recommends that
13 certification come with the condition that the GEMS
14 1.18.19 is only certified for use again with the TS
15 4.3.15D, the SpyruS 1.3.2, and the Key Card Tool Utility
16 1.0.1.

17 Finally, there's public comment received on this
18 issues. There are two comments received specifically on
19 this application. Both raise objections to the use of
20 Diebold Voting Systems generally and the GEMS software
21 specifically. You have copies of all of the public
22 comment received under -- in your binders.

23 Thus ends the staff report.

24 CHAIRPERSON KYLE: Questions from the Panel?

25 PANEL MEMBER DANIELS-MEADE: I have a couple of

1 questions.

2 I note under the Spyrus Vote Card Encoder, and
3 you mentioned also, that it can only handle up to eight
4 ballot styles. Now, I recognize that would not be a
5 problem in a general election. But I'm a little concerned
6 if poll workers, upon whom we are already placing a lot of
7 new conditions and a lot of further testing requirements,
8 if that does not cause concern for anybody else with
9 respect to expecting that a poll worker's going to know
10 which instrument they should be using if they have to have
11 multiple ones at the precinct. So I don't know if anybody
12 can address that question.

13 ELECTIONS ANALYST WAGAMAN: The Spyruses were
14 used previously in this last election in some counties,
15 and they were able to use them successfully in that
16 application. It is a concern and it is an issue that they
17 only can handle eight, but it has been done successfully
18 on the county level -- on the precinct level.

19 PANEL MEMBER DANIELS-MEADE: It was not an issue
20 in the primary for anybody?

21 ELECTIONS ANALYST WAGAMAN: Right.

22 PANEL MEMBER DANIELS-MEADE: Okay. My second
23 question actually is more of a recommendation. I would
24 ask that the Panel in its revised certification include as
25 a condition of certification item that you have listed as

1 No. 23 in our materials, and that relates to the proof of
2 escrow documents needing to be received by the Secretary
3 of State's Office prior to use. It is my understanding we
4 do not yet have that escrow material or certification that
5 those materials are on deposit with us. At this point I
6 would ask that we not certify until we do have those
7 materials in hand.

8 ELECTIONS ANALYST WAGAMAN: That is correct. We
9 have a copy from the vendor their application requesting
10 from the escrow company that they send us a copy of that
11 proof of escrow. We have not received that yet from the
12 escrow company. The Panel would be perfectly reasonable
13 to add that as a condition for certification.

14 VICE CHAIRPERSON CARREL: Any other questions?

15 PANEL MEMBER MILLER: Yes, Mr. Vice Chair.

16 You indicated that the consultant had outlined a
17 number of security concerns that remain, even though this
18 system is certainly far better than the previous system in
19 terms of addressing some of the RABA recommendations. But
20 A through I the consultant indicated there were various
21 concerns that he indicated could be addressed through
22 local procedures and the like.

23 Why would we not require that these concerns be
24 addressed through local procedures as a set of conditions
25 for certification?

1 ELECTIONS ANALYST WAGAMAN: A lot of those
2 procedures are procedures already in place in California,
3 so they're already issues, about like the security of the
4 central tabulation computer and those kinds of things that
5 have already either been required by this Panel or are
6 already in place. So a lot of what he's referring to
7 there are things that are required.

8 Some of the things he refers to are the counties
9 using the system as defined in the procedures and as, you
10 know, defined in the system user manuals about taking
11 advantage of some of these security features that are
12 actually added in, that some of them are not -- if the
13 county did not use them, then they would not bring that
14 additional security feature. For example, if they didn't
15 change that key code, there isn't a -- they aren't forced
16 to. There is a default function. If they continue to use
17 that default, then they don't -- there is no additional
18 advantage of having the tool. Has to be used to present
19 any additional benefit.

20 PANEL MEMBER MILLER: Could we reference with
21 appropriate caveats the concerns and addressing those
22 concerns through local procedures? I don't understand
23 some of his descriptions, quite frankly. But if he is
24 concerned about some of the security issues, we should be
25 concerned, it seems to me, unless we are convinced that

1 he's off base. So could we appropriately with caveats, if
2 necessary, reference those and make them conditions of
3 certification to the extent that they would apply or
4 something to that effect?

5 ELECTIONS ANALYST WAGAMAN: Yes, we could take --
6 you could include that as part of the motion, that local
7 procedures be put in place as identified in the
8 consultant's report.

9 PANEL MEMBER MILLER: Okay. Then I think we
10 should do so.

11 Ms. Mehlhaff has an issue.

12 ELECTIONS DEPUTY CHIEF MEHLHAFF: Your adoption
13 is to make these changes in the California Use Procedures?

14 PANEL MEMBER MILLER: Okay. I'm getting to the
15 procedures.

16 ELECTIONS DEPUTY CHIEF MEHLHAFF: So we can
17 include them there as well.

18 PANEL MEMBER MILLER: Okay. They need to be
19 addressed as well, one way or the other.

20 With respect to the procedures themselves, the
21 cover sheet on the procedures, page 1 of the procedures,
22 picks up boilerplate language from other procedures
23 manuals. I'm concerned about the statement, "Should there
24 be a conflict with the current or future provisions of the
25 Elections Code, these procedures shall take precedence."

1 I've been troubled by that previously and I'm
2 troubled by that now. How can these procedures take
3 precedence over state law?

4 ELECTIONS DEPUTY CHIEF MEHLHAFF: You're right,
5 that's just -- that's standard boilerplate language, has
6 been in place for a long time. And since this is an
7 existing vendor who has had this system in place in
8 California for years, this cover sheet -- I mean while
9 they've changed the internal stuff, that was not
10 communicated to them by staff that that needed to be
11 changed. So that can easily be changed. We can certainly
12 delete that statement or add another --

13 PANEL MEMBER MILLER: Yeah, I think that would be
14 appropriate to delete that sentence.

15 Speaking of the procedures, the staff report
16 indicates that indeed state law requires a posting of
17 results at the end of the day when polls are closed, a
18 posting of the results at polling places, citing the
19 voting machine sections of the Elections Code. And yet --
20 maybe I just missed it -- reading the procedures
21 themselves, the procedures don't seem to require such.
22 Did I miss something in the procedures or should we add
23 that to the procedures as addressed in the staff report
24 itself?

25 ELECTIONS ANALYST WAGAMAN: That provision was

1 not contained within the procedures, so that would be
2 something that they would be bound to regardless. But if
3 you want to add it as a part of the procedures, have at
4 it.

5 PANEL MEMBER MILLER: I think we should specify
6 that in the procedures just to make it clear.

7 Thank you.

8 VICE CHAIRPERSON CARREL: Since the Chairman's
9 back, I'm going to ask my questions now.

10 I have also similar questions regarding the
11 technical consultant's report and security items listed A
12 through I. And as Mr. Miller suggested, regarding both
13 the procedures -- and then, Ms. Mehlhaff, you mentioned
14 California Use Procedures. I would go a step further.
15 Well, if we determined to -- were determined to set
16 conditions of local procedures, I would also add the
17 condition that the county report back to us on what
18 procedures they've instituted and what training they've
19 instituted to make sure the poll workers are aware of the
20 procedures and familiar with them.

21 It's fine if the California Use Procedures are
22 changed, but I still would like a report back regarding
23 training. That seems to be a big issue right now. And
24 because there's so much information, that needs to be
25 expressed to these poll workers, making sure the poll

1 worker actually understands it. It's critical.
2 Particularly regarding security issues, that can only be
3 addressed through procedures.

4 The other question -- or a question that I had
5 was a statement on executive summary regarding the -- I
6 lost it. But it was regarding the -- oh, here we go,
7 right at the beginning -- regarding the 2002 versus the
8 1990 standards. And it says that a majority of the
9 components were tested under 2002, but parts were under
10 1990.

11 While this can only be used for the TS system in
12 three counties and this can only be used I guess for
13 this -- well, it would be used until 2006 when a revised
14 version would come through and you'd certify it with a
15 voter-verified paper trail.

16 My question is: Do we have anything in place? I
17 know at the federal level there's been discussion about
18 recertification of every system under the 2002 standards
19 completely by 2005. And do we have any knowledge about
20 whether the ITA's are sticking by that NASED
21 recommendation or if there's any enforceability of that
22 NASED recommendation or that NASED's not in the business
23 of testing anymore, although they're still issuing -- I
24 don't -- I'm still a little confused by it. And are we --
25 how does that impact what we're doing here in California?

1 I don't know if you have an answer to that.

2 ELECTIONS DEPUTY CHIEF MEHLHAFF: The only thing
3 I can tell you in terms of the time line at the federal
4 level -- you're right, there was that January 1, 2005,
5 date put out there that -- it was a NASED advisory that
6 essentially said, "We want everything by January 1, 2005,
7 to be '02 compliant." That was a policy recommendation by
8 NASED. That's what -- everyone operating at the federal
9 level in terms of going forward.

10 However, NASED is essentially just in an advisory
11 role now that NIST and the EAC have taken over. So that
12 decision lies with the EAC. You know, we're in July.
13 January is approaching quickly. I don't know what their
14 intent is. I know that there has been discussions at that
15 level. But what direction they are going, I am not privy
16 to that information, so I do not know. But ultimately
17 that would be a decision made by the EAC.

18 VICE CHAIRPERSON CARREL: Can I ask the staff to
19 look into that, report back to us at the next hearing,
20 next meeting of this Panel, on the status of the 1990,
21 2002 issue, so that we're familiar with it and then we can
22 take our own position on it once we have all the
23 information in front of us.

24 Thank you.

25 CHAIRPERSON KYLE: Before the next question.

1 Mr. Carrel, didn't you have procedural security
2 concerns that were county specific versus -- It's my
3 understanding --

4 VICE CHAIRPERSON CARREL: Well, I -- that goes to
5 what I mentioned, which was I would like a report from
6 every county as to how they're going to train the poll
7 workers and what they're going to do to comply with the
8 security procedures. I should be clear. I don't just
9 want a written report. Often times they get sent to
10 somebody in December. I would like them actually come
11 back and report in person prior to the election how
12 they're doing this.

13 And I don't know if we're having any scheduled
14 election -- I mean scheduled hearing before October --
15 between the 25th, as we've scheduled, and election date.
16 But it would seem that if training were to occur, it would
17 happen after August 25th. And so we'll have to -- but I
18 would like a report from each county in person in addition
19 to in writing.

20 CHAIRPERSON KYLE: Well, we have at least one
21 county representative here, Alameda, where this is
22 germane.

23 Mr. Clark, would you mind just commenting on that
24 and telling us how that sits and what your perception of
25 that is and whether that's something that is doable in

1 September or October or August or -- anybody from Alameda?

2 Do we have anybody here from Plumas?

3 Anyone from Los Angeles?

4 Okay. Yeah, would you mind coming to the
5 microphone.

6 Thank you.

7 Don't mean to put you on the spot. But just
8 since your here.

9 MR. CLARK: Okay. For the record, I'm Brad
10 Clark, Alameda County Registrar of Voters.

11 CHAIRPERSON KYLE: Tip the microphone towards
12 you.

13 MR. CLARK: We're in the process of rewriting our
14 poll worker manuals right now. I'm expecting that, you
15 know, this system will be certified. And we could
16 certainly report back on what our procedures are and how
17 we're training poll workers. That's not a problem.

18 CHAIRPERSON KYLE: And about when do you think,
19 just looking at it -- because we're prepared to set dates.
20 But would it be post-end of August or --

21 MR. CLARK: Probably September, I would say.

22 CHAIRPERSON KYLE: Okay.

23 MR. CLARK: That's when our training will take
24 place. Beginning of October the training starts.

25 CHAIRPERSON KYLE: Okay. So sometime prior to

1 that? Okay.

2 Other comments or questions from the panel?

3 Mr. Jefferson.

4 PANEL MEMBER JEFFERSON: Yes. I wanted to echo
5 the concerns that Tony had earlier about the security
6 weaknesses A through I noted by our consultant. I was
7 actually a little surprised that they were not included in
8 Diebold's own manual of procedures for the use of this
9 equipment.

10 But I did have a couple of questions about them.
11 What is -- so we're being asked to certify 1.18.19 of
12 GEMS. What then would be the status of 1.18.18?

13 ELECTIONS ANALYST WAGAMAN: 1.18.18 is still
14 certified for use. It has not been decertified by this
15 panel, so it is still certified for use.

16 PANEL MEMBER JEFFERSON: Right. So what I would
17 like to suggest is that concomitant with certifying
18 1.18.19, we really should decertify 1.18.19, for not
19 only --

20 ELECTIONS ANALYST WAGAMAN: For the TS?

21 PANEL MEMBER JEFFERSON: Yes, for the TS, right.

22 -- and not only because we want these upgraded
23 security provisions, but in particular because of one of
24 the security weaknesses listed, which is B, "The GEMS
25 database should not be accessed by any other DAO-capable

1 program." Well, 1.18.18 is a DAO-capable program. We
2 don't want 1.18.18 and 1.18.19 to be co-resident at all.
3 We just don't want them to be two roots into the database.
4 We want people to only go through 19.

5 What is your thought about that?

6 ELECTIONS ANALYST WAGAMAN: The only issue I
7 would raise is -- well, two issues: One, as Mr. Carrel
8 mentioned, that we would not -- if we decertify 1.18.18
9 entirely, we'd have no system for the optical scans
10 since --

11 PANEL MEMBER JEFFERSON: I take your correction,
12 yes.

13 ELECTIONS ANALYST WAGAMAN: And, secondly, there
14 are specific requirements in the Elections Code as far as
15 decertification within that six-month period prior to the
16 election. So I would defer to one of the lawyers on that
17 issue about whether this would be something that would
18 fall under that condition -- under those requirements or
19 not.

20 PANEL MEMBER JEFFERSON: I see your point.

21 CHAIRPERSON KYLE: Probably would. Though we'll
22 ask Mr. Stewart to look into that, counsel for the
23 Elections Department. But I think it would.

24 It doesn't mean though that we couldn't go in
25 that direction. It just means it wouldn't be applicable

1 for November, but --

2 PANEL MEMBER JEFFERSON: And we could also make
3 an explicit recommendation to the counties to pay
4 attention to that issue, the presence of 1.18.18 and Item
5 B on that list of security items.

6 CHAIRPERSON KYLE: We could also make it a
7 requirement that it's just --

8 VICE CHAIRPERSON CARREL: We could also make it a
9 condition -- just make it a condition that, you know,
10 1.18.19 is installed, 1.18.18 has to be uninstalled.

11 PANEL MEMBER JEFFERSON: Yeah, something like
12 that.

13 VICE CHAIRPERSON CARREL: And given that I
14 believe all the counties using TS plan on using 1.18.19,
15 that would achieve what we're trying to achieve.

16 PANEL MEMBER JEFFERSON: I don't think it's a
17 problem. I'm sure we can do it some way. So I suggest we
18 do do it some way.

19 CHAIRPERSON KYLE: Other questions?

20 Mr. Mott-Smith?

21 PANEL MEMBER MOTT-SMITH: No.

22 CHAIRPERSON KYLE: Ms. Jones?

23 PANEL MEMBER JONES: No.

24 CHAIRPERSON KYLE: Mr. Miller?

25 PANEL MEMBER MILLER: I just have one follow up.

1 I'm going to be very, very clear.

2 TS can only be used if certified using the SpyruS
3 Voter Card Encoder; it could not used with PCM; is that
4 correct?

5 ELECTIONS ANALYST WAGAMAN: Correct. PCM is not
6 certified currently. PCM has not been brought forward for
7 certification as part of this application. It was not
8 part of the testing. It could -- the card activation
9 function could only be done either through the SpyruS or
10 by the TS itself.

11 PANEL MEMBER MILLER: Thank you.

12 CHAIRPERSON KYLE: And I have one point.

13 Just to echo what was being suggested earlier,
14 that the 1.18.19 GEMS be certified exclusively with the
15 use of this system in its totality, not to any other
16 system optical scan, et cetera, et cetera. So it would be
17 limited to those three counties should they so choose to
18 go with -- and run this system, which I understand Alameda
19 is. I can't speak for either Los Angeles or Plumas.

20 VICE CHAIRPERSON CARREL: So I have collected six
21 conditions from all of us. Do you want me to go through
22 them?

23 CHAIRPERSON KYLE: Please. Would you mind
24 repeating them for the record.

25 VICE CHAIRPERSON CARREL: That the items be

1 placed -- that certification not be finalized -- or as
2 condition of certification that use not be allowed until a
3 copy of the software is placed in escrow -- firmware
4 placed in escrow. That all of the security conditions be
5 addressed through -- I would recommend through both the
6 California procedures and the local procedures. And that
7 all three counties using this system report back on how
8 they're training their poll workers and how they're
9 implementing those procedures.

10 That we delete the sentence in the procedures
11 regarding -- about precedence -- the precedence of the
12 procedures over state law. That we place as a condition
13 that the results must be posted at the end of the day.
14 That this 1.18.19 is exclusively for use on the TS and
15 that its use cannot be concurrent with 1.18.18.

16 ELECTIONS ANALYST WAGAMAN: Just one point of
17 clarification would be that it would only be the TS and
18 also the other two components, the SpyruS and the card
19 encoder, would be the -- all four components.

20 VICE CHAIRPERSON CARREL: (Nods head
21 affirmatively.)

22 PANEL MEMBER MILLER: Public comment.

23 CHAIRPERSON KYLE: Does that capture the
24 discussion?

25 Any corrections?

1 Okay. Before we -- I'll entertain a motion on
2 that and then I'd like to open it to public comment.

3 CHAIRPERSON KYLE: And also there were supposed
4 to be cards filled out. Does anybody have those?

5 MS. LEE: I filled out a card. But my testimony
6 is pretty general.

7 CHAIRPERSON KYLE: Could you give us your name
8 please.

9 MS. LEE: Paula Lee.
10 So I don't know whether to do it now or later.

11 CHAIRPERSON KYLE: Do you have -- I'm sorry.
12 It's general. Is it specific to this issue, your
13 testimony?

14 MS. LEE: It's general to certification of all
15 the systems, so I didn't know if you wanted me to do it
16 now or --

17 CHAIRPERSON KYLE: We'll wait until later. Thank
18 you.

19 And what was your name? Paula Lee. We'll put
20 this -- we'll call you.

21 Any other specific to this?

22 We have Dennis Paull.

23 ELECTIONS ANALYST WAGAMAN: Did the Chair want to
24 limit time on speaking or not?

25 CHAIRPERSON KYLE: Yeah, we'll keep it -- I think

1 there's only a few folks speaking. We don't have a packed
2 crowd like we had the last few. So a few minutes.
3 Thanks.

4 MR. PAULL: Yes, my name is Dennis Paull. I'm
5 representing Commonweal Institute.

6 I'd like to make my concerns about the voter card
7 as a technique for this voting system, the TS or any
8 others. We have the ability now to program each of the
9 voting machines to make them unique to a particular
10 precinct -- or a particular ballot style. And we do L and
11 A testing. But as soon as we insert another means of
12 changing the code in the voting machine by inserting a
13 voter card, particularly the ones as I understand that
14 have large amounts of memory on them and could be doing
15 who knows what, we don't then do any further L and A
16 testing.

17 And it seems like we are opening up a huge hole
18 whereby these voting machines could be modified. Really
19 all it takes is one bit of information that says, "Go into
20 real mode instead of test mode," or some such thing as
21 that, that violates the whole security issue around voting
22 machine limits. The whole concept of having L and A
23 testing is that we know exactly then how these machines
24 are going to work at the polls.

25 But as soon as you take a card which can be

1 programmed, you know, by a poll worker and -- you know,
2 who knows what can get on to that card -- and that card is
3 fed into the voting machine, it can change what the voting
4 machine does. And it doesn't seem like anybody's
5 addressing that issue.

6 VICE CHAIRPERSON CARREL: Thank you, Mr. Paull.

7 PANEL MEMBER JEFFERSON: I guess I agree, that
8 that is a hole that I wish we would deal with. We should
9 be paying special attention to the software that is
10 invoked at the time that one of these cards is inserted.
11 And I agree, that's a flaw.

12 VICE CHAIRPERSON CARREL: Next let me ask -- I
13 have Linda Roberts here for Item 1. And she didn't speak.
14 Did you want to speak on this item or do you want to wait
15 till the end for the gentlemen?

16 MS. ROBERTS: Well, it's mostly to do with 1,
17 but -- you know, it will be real short.

18 I'm here representing two organizations:

19 The Peace & Freedom Party, Sacramento County
20 Committee. We're strongly in support of the instant
21 runoff voting, so -- you know, relative to the San
22 Francisco system. But we want to go on record saying we
23 want a verifiable system, a system that is not
24 corruptible.

25 I'm also here representing Californians for

1 Disability Rights. Within the disabled community these
2 issues are so controversial that we have to take a
3 position. On one hand we want verifiable voting. On the
4 other hand we want a voting that's accessible and that you
5 don't have to get help.

6 I did attend a trial that was done by my county
7 just last week. And we tried the ES&S system. And I gave
8 them a favorable reporting, though we haven't taken a
9 position yet. It was verifiable and it was accessible. I
10 had a little trouble typing it with my disabled hands, but
11 it was accessible and it was verifiable. And that's the
12 kind of system we want.

13 Thank you.

14 VICE CHAIRPERSON CARREL: Thank you.

15 Jim March.

16 MR. MARCH: Well, to clarify, first I want to
17 know if the staff report that was read to you is available
18 on the Internet or was it made available before the
19 meeting, as was repeatedly promised to the activist
20 community?

21 VICE CHAIRPERSON CARREL: I don't know. Was
22 either the report or the executive summary of the report
23 made available to the public?

24 ELECTIONS ANALYST WAGAMAN: There was not
25 direction from the Chair to release that.

1 MR. MARCH: Okay. So I'm coming in blind as to
2 exactly what changes are being made to the TS.

3 One of the things that I hope this Board is
4 investigating is whether or not the federal oversight
5 process is now finally scrutinizing the software that
6 creates the smart cards. We know -- we've known for a
7 long time, and you now know officially, that the SpyruS
8 hand-held devices are being altered with Diebold firmware.
9 They're actually reporting on that now, where they didn't
10 used to. All previous reports on Diebold touchscreens did
11 not include that information.

12 We don't know exactly what Diebold is telling
13 those SpyruS hand-held devices to do. We don't know what
14 the PCM 500 was told to do either. So that's the concern
15 this gentleman had of these devices. Whether they're big
16 or small doesn't matter. They're writing out data to a
17 smart card, and we don't know what that data is. That
18 scares the hell out of me.

19 Second, despite all the very good findings and
20 reports and studies you guys did back in April -- reported
21 back in April -- you guys did a good job -- you missed one
22 big element sitting in the middle of the tent. And that
23 is that Diebold has repeatedly conned the federal
24 oversight process. Their own internal E-mails say that
25 they told lies to Cyber, Metamor and to Wyle Labs. Okay?

1 The foremost of these lies was the fact that the
2 database is completely hackable by any copy of Microsoft
3 Access is not a problem. Ken Clark's own E-mail -- my
4 very first letter to you, which I reviewed the report of
5 this morning, looking at again, Ken Clark says, "Yeah, I
6 can tamper with the data any which way I want. There's no
7 security on it. And pass off a story to Metamor. They
8 probably won't buy it. We'll probably have to rewrite
9 half the bloody thing to fix this." But Metamor accepted
10 what Diebold knew internally were lies.

11 If the federal oversight process is being
12 subverted by a company like Diebold, then we have to ask
13 two questions: One, what the hell are we doing using
14 Diebold in California? And, two, if they're able to
15 subvert the federal oversight process, who else was able
16 to do the same thing?

17 The core of all of our security or
18 trustworthiness at this point is the federal oversight
19 system. And we -- not only do we suspect that it's not
20 trustworthy; we know that it's not, from Diebold's own
21 internal E-mails and from the things that you've seen out
22 of Diebold and reported in April.

23 So far you guys are ignoring the elephant in the
24 middle of the tent, and I'd like to see that changed.

25 Thank you.

1 VICE CHAIRPERSON CARREL: Thank you.

2 All the other commenters are for Item No. 7.

3 ELECTIONS ANALYST WAGAMAN: We have one
4 additional card that --

5 PANEL MEMBER JEFFERSON: I'd like to make a
6 response to that.

7 VICE CHAIRPERSON CARREL: Mr. Jefferson.

8 PANEL MEMBER JEFFERSON: Yes. I actually wanted
9 to concur with Jim's points, several of them actually, one
10 about the public availability. I really think we should,
11 you know -- we should ask staff to meet the deadline like
12 at least a week in advance so that the public and also so
13 the members of the panel can get the paperwork before
14 these hearings. I, for example, only received it on
15 Saturday. So I would like to change our policy about
16 that. And as a side effect that would help everybody else
17 in the public.

18 VICE CHAIRPERSON CARREL: We need to establish a
19 policy also -- just an inner-ruling about which reports we
20 post early and whether it's the summers or what have
21 you --

22 MR. MARCH: That was when you promised. Just so
23 you know, a promise was made to the public to change that
24 months ago.

25 PANEL MEMBER JEFFERSON: Right.

1 And the second point I want to agree with, which
2 I also -- again a repetition of what Dennis Paull said.
3 The second you insert a smart card into a voting machine,
4 that smart card is now part of the voting machine.
5 There's now a -- it's now a small dual processor system;
6 it can share any data or any software, and we do have to
7 pay more careful attention to that aspect at that juncture
8 of the security architecture.

9 VICE CHAIRPERSON CARREL: Thank you.

10 Kim Alexander.

11 MS. ALEXANDER: Good morning. Kim Alexander with
12 the California Voter Foundation.

13 The specific item I wanted to bring up relating
14 to this certification is, it's my understanding that the
15 GEMS 1.18.19 and the modified TS unit will allow for
16 electronic provisional voting based on the staff report.
17 And I'd just like to point out to you all that that's
18 inconsistent with the Secretary of State's decertification
19 and recertification orders on April 30th, which say that
20 provisional voters must cast ballots on paper ballots in
21 the polling places.

22 So I strongly urge this panel to not allow the TS
23 machine, or any other touchscreen unit in the state for
24 that matter, through the certification conditions to not
25 be used for electronic provisional balloting, not only

1 because of the kind of security concerns that the staff
2 raise in terms of trying to make sure that the ballots are
3 all counted properly and also making sure that the voters'
4 ballot secrecy is protected in this electronic provisional
5 voting environment; but also, as the staff reported,
6 they're printing out these electronic provisional ballots
7 and scanning them anyway, so why not just have the voters
8 cast a paper ballot.

9 The order requires that there be a supply of
10 paper ballots available at the polling places. And it
11 would be much more secure and ensure voter privacy if the
12 provisional voters would be casting their ballots on paper
13 and not electronically.

14 VICE CHAIRPERSON CARREL: To respond. While this
15 system has the function -- or this software functionality
16 for electronic provisionals, the Secretary's directive of
17 April 30th is superior to that and, thus, all provisional
18 ballots for this coming election have to be on paper. And
19 so even though this software would have the functionality
20 of it, it's not going to be used that way for November.

21 MS. ALEXANDER: Well, with all due respect, Mr.
22 Carrel, our experience in the March election was that many
23 of the counties defied the Secretary of State's security
24 orders prior to March election and we have four counties
25 in the state that recently sued the Secretary of State in

1 defiance of his decertification orders on April 30th.

2 So my feeling is better safe than sorry. I mean
3 if you want to go out of your way to make sure that all
4 those counties don't --

5 VICE CHAIRPERSON CARREL: We're signing -- we're
6 signing agreements with every county regarding the
7 security procedures including provisional ballot
8 requirements, so I don't --

9 MS. ALEXANDER: So despite the fact that this
10 machine allows for electronic provisional balloting,
11 you're saying there will be no electronic provisional
12 balloting in California in November?

13 I just want to be clear.

14 VICE CHAIRPERSON CARREL: What I'm saying is the
15 directive of the Secretary is that this November all
16 provisional ballots must be on paper.

17 MS. ALEXANDER: Okay. Thank you.

18 VICE CHAIRPERSON CARREL: Lowell Finley.

19 MR. FINLEY: Hello. My name is Lowell Finley.
20 I'm an election law attorney in Berkeley, California.

21 I would like to underscore the problem with this
22 body considering significant decisions like the
23 recertification of the Diebold AccuVote TS system without
24 having made any of the staff reports or recommendations
25 available to the public prior to the meeting and, indeed,

1 without even having made available an agenda which
2 indicated that this matter would be considered today as
3 opposed to next week or the week after that or the week
4 after that or on any one of four different meetings dates
5 that have been scheduled for August.

6 I think given the history of the concerns that
7 have been borne out about Diebold equipment and software,
8 it is really outrageous that proceedings would be
9 conducted at this time without more meaningful notice to
10 the public.

11 And I would urge the panel to withhold any voting
12 on this matter until at least the next scheduled meeting;
13 so that after what I hope will be a very prompt release of
14 the staff materials that are before the panel now to the
15 public, it will be possible for us to come back and make
16 meaningful comment on this recommended recertification.

17 Thank you.

18 VICE CHAIRPERSON CARREL: That's all the public
19 comment for Item 5.

20 CHAIRPERSON KYLE: I'm going to call for a
21 ten-minute break at this time. I'm going to ask for some
22 indulgence here. I want to be briefed on the comments
23 that were made during my absence and Mr. Miller's absence
24 so that we can -- I can be debriefed by Caren
25 Daniels-Meade.

1 Thanks. So we'll convene in ten minutes.

2 (Thereupon a short recess was taken.)

3 VICE CHAIRPERSON CARREL: We're going to start up
4 again. We have a quorum. We can continue.

5 I would just table Item 5 until the Chair
6 returns. He'll be back in a few.

7 So let's move on to Item No. 7, which is Public
8 Comment -- I mean Other Business. And under "Other
9 Business" we had a scheduling item discussion. And I
10 don't know whether there was -- I think there were four
11 people who handed in cards who stated that they wanted to
12 comment. So why don't we first go -- do we want to first
13 go to the scheduling item and then take up the comments?
14 Does that make sense.

15 Okay. Let's go to the scheduling item. We
16 have -- and staff, if you can assist -- provide me some
17 information. We now have a variety of dates. And I'm of
18 the understanding, correct me if I'm wrong, that July 19th
19 there is nothing that will be ready by the 19th for
20 presentations, correct?

21 ELECTIONS ANALYST WAGAMAN: Correct, assuming
22 this item -- unless this item is put forward, correct.

23 VICE CHAIRPERSON CARREL: So let's cancel July
24 19th. July 26th, do we expect anything --

25 PANEL MEMBER JEFFERSON: Unless this item should

1 be carried forward. I would like to at least not
2 foreclose that possibility.

3 VICE CHAIRPERSON CARREL: Okay. So let's hold
4 off the 19th then.

5 The 26th. Are there any other items related to
6 any of the items that are noticed on here that you're
7 expecting to have tested and presented available for the
8 26th?

9 ELECTIONS DEPUTY CHIEF MEHLHAFF: As was
10 previously mentioned, we do have testing scheduled for
11 next week for the optical scan components for the Diebold
12 system. But that testing's scheduled through I believe
13 it's the 24th, which means if we're having a meeting on
14 the 26th, the odds of us getting a staff report and our
15 technical consultant's report done and ready is very
16 unlikely prior to the 26th.

17 VICE CHAIRPERSON CARREL: I would move that we
18 also -- well, I would move that we cancel the 26th meeting
19 and move that item -- scheduled item for August 4th.

20 Is there any --

21 PANEL MEMBER JEFFERSON: Well, will we be able to
22 get documents ready a week before August 4th. Is that --
23 just to pick a week, is it --

24 ELECTIONS DEPUTY CHIEF MEHLHAFF: I mean the
25 staff report will be ready minus the technical

1 consultant's report. You know, we don't have --

2 VICE CHAIRPERSON CARREL: We don't make --

3 ELECTIONS DEPUTY CHIEF MEHLHAFF: -- control over
4 his schedule is a matter of, you know, he does this work
5 for other states as well. So --

6 PANEL MEMBER JEFFERSON: Is that report public,
7 the technical consultant's report?

8 ELECTIONS DEPUTY CHIEF MEHLHAFF: In the past
9 parts of it have not been when it refers to specific
10 sections of Code.

11 PANEL MEMBER JEFFERSON: I was just thinking if
12 we were to -- so what part of that we have to release?

13 VICE CHAIRPERSON CARREL: I think the standard,
14 when there's been some miscommunication over the standard,
15 has to be that the staff report has to be made public
16 before the VSP meetings. We did that for the last three
17 meetings. Unfortunately we didn't do that today. And so
18 we had to deal with trying to achieve some schedules with
19 regard to presenting it to the members of the Panel and
20 then putting it on line for the public.

21 So if there's no objection, we'll cancel the 26th
22 meeting.

23 And then I know that there were in hearings last
24 year on Mark-a-Vote and Ink-a-Vote certifications, we
25 asked for -- or I asked for a report to be produced which

1 would provide us residual vote rates and how that was
2 addressed. And have we received that report back on those
3 systems?

4 ELECTIONS DEPUTY CHIEF MEHLHAFF: Yes, we have.

5 VICE CHAIRPERSON CARREL: Can we schedule staff
6 updates on those reports and invite the vendors to come to
7 the August 4th meeting on that as well?

8 ELECTIONS DEPUTY CHIEF MEHLHAFF: Um-hmm.

9 VICE CHAIRPERSON CARREL: Thank you.

10 Actually can we do that if it's not -- I guess
11 it's --

12 ELECTIONS DEPUTY CHIEF MEHLHAFF: It would be
13 just an informational item with no action taken by panel.

14 VICE CHAIRPERSON CARREL: Okay. Great.

15 So we haven't made a -- we haven't addressed July
16 19th. And I guess we will address July 19th when we
17 determine whether we'll take a vote on Item 5, it being
18 today or not.

19 Let's go to public comment on Item 7.

20 So any general comment from the public? We have
21 four cards. If there's anyone else who wants to speak on
22 any item today, we do have cards available.

23 And Paula Lee.

24 MS. LEE: Can I wait till the Chair and the
25 members are all here?

1 VICE CHAIRPERSON CARREL: No. I would rather --
2 the Chair had asked -- he said we would brief him on it.
3 But we wanted us to take Item 7. And unfortunately that's
4 public comment.

5 So I can put you at the back of the line.

6 MS. LEE: Okay. That's fine.

7 CHAIRPERSON KYLE: Maureen Smith.

8 MS. SMITH: Hi. My name's Maureen Smith. And I
9 planned vacation around these meetings. So I was really
10 surprised to see the dates.

11 I have specifics that I want to address. And so
12 I'm wondering if it ends up being on a date I can't
13 attend, should I just send my comments in now? Will they
14 be put into the packets in time and so forth?

15 VICE CHAIRPERSON CARREL: Um-hmm.

16 MS. SMITH: And will you by the time we leave
17 today pretty much know which dates are going to be real
18 meetings?

19 VICE CHAIRPERSON CARREL: Well, I think, as the
20 Chair said earlier -- this is in terms of your first
21 question, to answer your questions in order. Yes, if you
22 submit public comment on paper, they will be provided to
23 all the members in their binders. And often we'll get it
24 ahead of time. If they're available ahead of time, staff
25 will provide it to us ahead of time.

1 MS. SMITH: So if it's like in at least a week
2 ahead of time, would that be enough or --

3 VICE CHAIRPERSON CARREL: That would be plenty of
4 time.

5 With regard to your second question. I think
6 we're prepared to make decisions today on the 19th. And
7 we just made the decision on the 26th. But unfortunately
8 because of the federal testing and because of decisions
9 made by the vendors themselves, things are getting
10 postponed. And we're setting these dates so that --
11 because we have to have a 30-day notice requirement, we
12 have to set the dates now. And then we can always cancel
13 them, as opposed to scheduling something later.

14 And so we're providing dates so that if there's
15 something ready -- and unfortunately while we had a lot of
16 items that are scheduled to be tested, some were pulled
17 from testing, some were pulled back for a variety of
18 reasons. Or we didn't get a federal NASED number.

19 MS. SMITH: What about the Avante? That was
20 pulled and it didn't have the same comment as the other.

21 VICE CHAIRPERSON CARREL: Avante was continued
22 by -- the item for their optical scan system was continued
23 by Avante itself. The second item, their DRE system, we
24 have not tested it yet because it's further down in the
25 queue for testing. We have certain dates scheduled for

1 testing. There's an order for the testing. And it wasn't
2 tested because it's further down in the order. We
3 couldn't test it when we had originally planned because a
4 NASED number wasn't available.

5 MS. SMITH: Is it the same one that was used by
6 Sacramento in an election?

7 VICE CHAIRPERSON CARREL: No, it's an updated
8 version.

9 MS. SMITH: Updated version.

10 Thank you.

11 VICE CHAIRPERSON CARREL: Dennis Paull.

12 MR. PAUL: Hi. My name is Dennis Paull from
13 Commonweal Institute.

14 I'm very concerned, as previous speakers are,
15 that the public is invited here for a reason which I guess
16 is not real clear, because informed public comment can
17 only come from an informed public. And we are not being
18 informed of the matters that are coming before the body.
19 And I would like to echo the earlier comments that -- I
20 think this is a necessity if you actually expect the
21 public to participate in any meaningful way.

22 The things that I think need to be made public
23 are the consultant report, vendor reports to you, and the
24 county procedures. My understanding -- well, it's not
25 clear which things are considered by the Secretary to be

1 public documents. But for those things that are public
2 documents, I think we either need a way to get them mailed
3 to us or to have them on line if we're to be a part of the
4 process of discussing those documents. And that's the
5 things that you are addressing here.

6 Okay. There's a question from the last speaker
7 here about getting written comments submitted to you.
8 That's a two-faced -- not a -- a two-part question. One
9 is how to get it into the folders that go to the panel and
10 the other is how to get it into the public record. I
11 think many of us that have submitted written comments to
12 you do not see that in the public record anywhere. So it
13 certainly -- I mean that's why we would sort of like to
14 come here and read you our comments as opposed to just
15 submit them to you, because there is a difference in terms
16 of the ability of other people to see them and also for us
17 to be able to come back a year later and say, "But look
18 what I told you last year, that this happened."

19 So I think there's a real concern -- I have a
20 real concern about getting into the public record.

21 The last comment here is actually -- again, to
22 put into the public record some comments that I sent to
23 you as a written submission about the process of bypassing
24 the security of the election management software. That
25 software is a big concern both to the Panel and to the

1 public. And basically -- you know, we've heard talks
2 about should the code be open so -- dah, dah, dah. Some
3 people say, "Yes, I would agree, they should be open
4 source." But that doesn't really solve the problem,
5 because nobody can really go through 50,000 lines of code
6 and understand it anyway.

7 So in order to get around that, I would propose
8 to everybody here that the counties make the
9 information -- the raw vote counts coming from the polling
10 machines, of whatever sort, whether they're hand punch
11 card or whatever sort, make them public on a
12 precinct-by-precinct basis early in the canvassing
13 process, you know, preferably on election night, but the
14 next day would be okay. And that those numbers be updated
15 then as the canvass proceeds, until finally we see the
16 final results at the end of the canvass.

17 If we did that, then there would be various ways
18 of making sure that the public can see that the election
19 management software is working correctly and that we don't
20 have the problems that has been reported in many other
21 states of votes disappearing overnight and no
22 accountability and registrars that say, "Oh, we had a
23 computer glitch," as somehow that that's the answer to the
24 problem.

25 No, that's just an indication that there is a

1 problem. That's not an answer to anything. And we need
2 answers. And by making the data public early, there's a
3 whole variety of steps that can be taken to make sure that
4 in fact the voting machine -- sorry -- the election
5 management software is functioning correctly. And I would
6 hope that everybody would take that into consideration.

7 Thank you.

8 VICE CHAIRPERSON CARREL: Thank you.

9 Jim March.

10 MR. MARCH: Speaking now as a member of the Black
11 Box Voting 501(c)(3) Nonprofit Organization's Board of
12 Directors. I'd like to point out that we have two public
13 participation problems here.

14 One, all the way back in what we think was
15 January -- but we're going to have to look that up through
16 the previous meeting notes -- this panel made a commitment
17 to making staff reports available before the meeting.
18 Okay, we've heard about that. But it is a problem.

19 Worse, in my opinion, is this document itself.
20 I've got some notes on it. But when the idea of having
21 six different vendors scattered across three different
22 days first cropped up, when this -- within a day or two of
23 this or an initial draft of this document showing up on
24 your website, I submitted public comments to the effect of
25 this isn't right. You're going to end up limiting public

1 participation because people who have special interests or
2 knowledge in a certain area -- such as Jeremiah Aiken,
3 who's all the way in Riverside County, who knows more
4 about the Sequoia system than anybody on earth, probably
5 including Sequoia, he can't plan what day to be here.
6 That's just one example.

7 Folks, you remember back in January -- forget the
8 April meetings now. Go back to January. We packed this
9 room, and it was a Diebold-only meeting. The meeting was
10 about Diebold. Everybody in the room from wall to wall
11 was here to discuss Diebold.

12 Now, you've taken us all the way back to the dark
13 days of September, October, November, when only the most
14 hard-core activists on the planet were here, a dozen of
15 us, you've taken us all the way back to that in terms of
16 public participation by this document, by various drafts.

17 And when I first complained about this, I was
18 told that, "Oh, don't worry about it. We'll figure out
19 what we're going to do on what days long before." Well,
20 no, you're sitting here today debating amongst yourselves
21 which vendor is going to pop up on which day and you're
22 still not sure. This is wrong.

23 As a member of the Board of Directors of the
24 Black Box Voting we've got 30,000 bucks in the bank. I'm
25 going to make a motion to the Board that we ask for a

1 legal opinion as to whether or not you guys are violating
2 the Bagley-Keene Act, which I believe is the California
3 public open meetings law that applies to a state body such
4 as yourselves.

5 My guess is that you're not in compliance with
6 that act. I don't think the public notice ahead of the
7 meeting times is met by this document. And I think
8 something needs to be done, if it has to be court, to
9 change how you guys are approaching the meetings.

10 What's going on now is not acceptable to folks.

11 Thank you.

12 VICE CHAIRPERSON CARREL: Thank you.

13 Paula Lee.

14 MS. LEE: Good morning. My name is Paula Lee.

15 I'm the executive Vice President of Californians for
16 Electoral Reform. We're a statewide nonpartisan
17 membership organization and we do education and advocacy
18 work around instant run-off voting and proportional and
19 semi-proportional representation systems such as
20 cumulative voting.

21 Our president, Steve Chessin, sent you a letter
22 on July 6th. And that should be in your packet. My
23 testimony today for him is based on that letter.

24 You have scheduled these meetings in July and
25 August to consider certification of voting equipment from

1 various manufacturers. We just wish to remind you that it
2 is the Secretary of State's policy as specified in the
3 HAVA plan, My Vote Counts, California's plan for voting in
4 the 21st century, that only equipment that can accommodate
5 both cumulative voting and the ranked ballots necessary
6 for IRV, instant run-off voting, should be certified in
7 California.

8 Quoting from pages 10 and 11 of that plan: "The
9 state will support, promote, and encourage the use of
10 direct recording electronic touchscreen voting systems and
11 optical scan systems that are compatible with alternative
12 voting methods such as ranked ballot and cumulative
13 volting."

14 "The State will consider decertifying systems and
15 refuse to certify systems that cannot accommodate
16 alternative voting systems in a manner in which voters can
17 easily understand."

18 And also in that booklet it says, "The State will
19 regularly evaluate voting systems to assess their ability
20 to accommodate alternative voting systems."

21 As Californians for Electoral Reform does not
22 have sufficient opportunity to examine the particular
23 equipment that you are considering certifying and the
24 certification materials that the various vendors have
25 submitted, we cannot comment on whether this equipment

1 complies with HAVA.

2 However, we would like you to determine if the
3 equipment is being considered and does it comply with the
4 plan. In particular, we would like your panel to ask the
5 following questions of each vendor.

6 Now, these questions are detailed in your letter.
7 And I probably don't have time to go through them all.

8 Thirty seconds?

9 I'll just ask a couple of them. And then I'd ask
10 you to look at the rest of them in the letter that we
11 submitted.

12 Does the equipment as submitted for certification
13 accommodate cumulative voting and ranked ballots? If not,
14 are the impediments to such accommodations hardware,
15 software, or both?

16 Does the system impose a limit on the number of
17 votes that can be calculated, accumulated and/or on the
18 number of candidates that can be ranked?

19 So the rest of the questions are listed. There
20 is the letter. I would appreciate it if you'd just like
21 them over as you consider certification.

22 Thank you.

23 VICE CHAIRPERSON CARREL: Thank you.

24 I'll pass it back to the Chair.

25 CHAIRPERSON KYLE: So I understand we're done

1 with Agenda Item No. 7?

2 VICE CHAIRPERSON CARREL: Unless there's any
3 other business.

4 CHAIRPERSON KYLE: I don't think there is. And
5 that we'll -- yeah, we'll return to 5. But actually
6 there's one outstanding open issue on 7, and that had to
7 do with next week's meeting.

8 VICE CHAIRPERSON CARREL: Right. So let's take a
9 look at that.

10 CHAIRPERSON KYLE: So I've heard some testimony
11 here, it was related to me while I was out of the room,
12 that there's a number of people that are disconcerted by
13 the lack of public notice. I had assumed it was posted.
14 That had been the discussion previously in other meetings.
15 There was quite a bit of discussion on trying to make it
16 as available as possible. There was a lot of public
17 testimony to that effect. There was a discussion and
18 there was a promise by the Voting Systems Panel to do so.

19 So my assumption was incorrect. I think there
20 was a breakdown in communications between this Panel and
21 the staff, and the staff incorrectly assumed one way and
22 we incorrectly assumed another way, and we needed to
23 double check. And we will address that issue and correct
24 it.

25 So I'm going to not entertain a motion for Item

1 No. 5 now. I'm instead, as the Chair, going to table the
2 item till the next meeting so that there can be adequate
3 public notice. I'm going to instruct staff to post on the
4 web today those items that are public.

5 And if the staff's unclear, then I would ask that
6 you come to me and to staff counsel, and we'll make sure
7 we're clear on all things that can and should be posted
8 and those that cannot and should not be posted. And there
9 will be some of each.

10 And then I'd like to take this up as the next
11 agenda item, first thing on the agenda, at the next
12 possible meeting.

13 And I just want to talk with the panel about
14 who's here next week, because I know one or two of us are
15 not here next week.

16 VICE CHAIRPERSON CARREL: I will be with the
17 Secretary out of state.

18 CHAIRPERSON KYLE: Okay. Mr. Mott-Smith?

19 PANEL MEMBER MOTT-SMITH: I'll be here.

20 CHAIRPERSON KYLE: Mr. Jefferson?

21 PANEL MEMBER JEFFERSON: I can be here.

22 CHAIRPERSON KYLE: Ms. Daniels-Meade?

23 PANEL MEMBER DANIELS-MEADE: I will be here.

24 CHAIRPERSON KYLE: Mr. Miller?

25 PANEL MEMBER MILLER: If the Lord so provides.

1 CHAIRPERSON KYLE: Mr. Jones?

2 PANEL MEMBER MILLER: We hope that he or she
3 provides for a long, long time.

4 CHAIRPERSON KYLE: Okay. And I'm not sure I'll
5 be here because I'm supposed to be on vacation. But maybe
6 I'll drive up and spend my first day of vacation at a
7 hearing.

8 So having said that, we will put this item off
9 until July 19th for a 10 o'clock meeting, with posting.
10 And if any other issues come up -- but it's the staff's
11 projection, correct, that no other item will be ready by
12 the 19th?

13 ELECTIONS ANALYST WAGAMAN: Correct.

14 CHAIRPERSON KYLE: Okay. And Mr. Wagaman, will
15 you be around on the 19th?

16 ELECTIONS ANALYST WAGAMAN: Correct.

17 CHAIRPERSON KYLE: Okay. Then we can proceed at
18 that time.

19 And with that I will accept a motion to adjourn.

20 VICE CHAIRPERSON CARREL: So move.

21 PANEL MEMBER DANIELS-MEADE: Second.

22 CHAIRPERSON KYLE: All in favor?

23 (Ayes.)

24 CHAIRPERSON KYLE: Any opposed?

25 Thank you.

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2 (Thereupon the California Secretary of
3 State's Voting Systems and Procedures
4 Panel adjourned at 12:05 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Secretary of State's Voting Systems
7 and Procedures Panel meeting was reported in shorthand by
8 me, James F. Peters, a Certified Shorthand Reporter of the
9 State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 17th day of July, 2004.

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23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
25 License No. 10063